



DR. DAVID LEE AND OTHERS IDENTIFIED IN ALLEGED KICKBACK SCHEME

Hattiesburg neurosurgeon David Lee and three other Mississippi physicians are listed as consultants who engaged in improper quid pro quo with Life Spine, Inc., a medical devices company the federal government has charged in a major federal kickback case taking place in New York. Life Spine designs, develops, manufactures and markets products for the surgical treatment of spinal disorders.

The case is set for oral arguments at 4 p.m. February 7, 2020, before Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York.

Government attorneys charge Life Spine with offering money and investment opportunities to physicians across the United States for using the company's devices during certain spine surgeries and procedures. Mississippi doctors recruited by Life Spine include Lee; the late Michael Molleston, a neurosurgeon who practiced most recently in Jackson but

operated for many years in Hattiesburg; Marsha Lucas of Greenwood; and Louis Rosa of Starkville. Lee is an employee of Southern Bone and Joint and on staff at both Forrest General Hospital and Merit Hospital; he operates at all three facilities.

“Life Spine’s entire business model revolved around kickbacks,” the government complaint states. “Defendants’ kickback scheme involved a business model that incentivized physicians to use Life Spine’s medical devices by rewarding them with lucrative consulting agreements and investment opportunities (via warrants for purchase of shares) in Life Spine’s business, as an illegal quid pro quo.

“In addition, Defendants offered illegal remuneration to the physician-consultants in the form of reimbursement, to induce the physicians to use Life Spine’s medical devices while performing certain surgical spine-related procedures.”

The complaint charges that under the alleged kickback scheme, Life Spine entered into improper consulting agreements with the physicians, who agreed to help market the company’s products to other surgeons and to help train surgeons and other employees. Consultants earned at least \$500 per hour, with rates depending on the type of device and the discussion and assistance provided.

The complaint also charges that the surgeons agreed to use Life Spine medical devices exclusively, or almost exclusively, on their own patients, many of whom were covered by Medicare or other government health-care programs. Consultants who brought in more than \$2 million annually in sales for Life Spine were able to purchase shares in the company at prices below market (as many as 35,000 shares at one cent per share). The agreements include not transfer of intellectual property, the federal complaint says.

“Defendants only offers consulting agreements to physicians

who agree to use its medical devices in their surgeries and meet certain sales volume. The consulting relationship is not based on providing any follow-up product review, feedback or evaluation, or other consulting work, but instead based on a tacit condition that the physician-consultants use Life Spine products. In turn, Life Spine pays the physician-consultants for this work without requiring any such product evaluation, review or feedback.

“In other words, the Life Spine consulting positions are sham consulting jobs that are intended to operate as channels for selling Life Spine’s medical devices for use in spine-related surgeries on the patients of Life Spine physician-consultants.”

NUMEROUS VIOLATIONS

The 72-page complaint filed by federal attorneys lists numerous violations of the False Claims Act, the Anti Kickback Statute, the Stark Statute and the Physicians Payment Sunshine Act. Also, it charges Life Spine with illegal termination of four employees who reported violations of the Sunshine Act.

The complaint also alleges that Life Spine’s kickback scheme has caused hundreds of thousands of dollars of false claims to be submitted to – and paid by – Medicaid, Medicare Part A, Medicare Part B, Medicare Part D and other government programs, according to government attorneys. The complaint says that the scheme similarly cheated the state governments involved in the court case.

The False Claims Act dates back to the Civil War but was last updated in 2009 to streamline the government’s ability to recover losses from fraud, to protect those who reveal government fraud, and to encourage lawyers to prosecute government fraud cases.

The False Claims Act includes a provision that prohibits retaliation against an employee who tries to stop government fraud. The law awards not only reinstatement to a person who is retaliated against, but also double the amount of lost back pay, interest on the back pay, and special damages such as attorney fees and court costs.

The Anti-Kickback Statute is formally known as the Medicare and Medicaid Patient Protection Act, 42, U.S.C. § 1320a-7b(b). This law was created to protect vulnerable patients by preventing the occurrence of goods and services that are medically unnecessary, poor in quality or outright harmful. It bans offers of money or anything else of value for encouraging or recommending the purchase of any item to be paid for by a federally funded health care program.

Violations of the Anti-Kickback Statute can bring criminal and civil penalties, and it can mean exclusion from participating in health care programs that are federally funded.

The Physician Payments Sunshine Act and the Patient Protection and Affordable Care Act both require companies to submit a report when anything of value is transferred to physicians. The Sunshine Act requires medical device manufacturers to reveal all payments or other transfers of value made to physicians or teaching hospitals. It also requires certain manufacturers to state when physicians have ownership or investment interests in their companies.

None of the doctors mentioned in the government's case against Life Spine, Inc., have been charged with any crimes at this time.